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EXHIBIT 11 B0H  
DATE 2-17-08  
HB 518

**A victim of Ostensible Agency.**

I've been in the Realty Estate industry for 35 Years and 2 Days. I have experience in all areas of Real Estate, Building, Property Management, Selling of Lots, Ranches, Homes and Commercial Property.

**Up until 7 months ago I had never heard of Ostensible Agency.**

Over the last 7 months I've found that the Real Estate Industry is **clueless** on Ostensible Agency in Real Estate I could not find anyone from Builders to Brokers that heard the words "Ostensible Agency."

Without evidence of wrong doing you maybe accused of fraud and misrepresenting the condition of a new home approved and inspected by FHA, State and Local Inspectors. The claim could come 2 Years down the road after a deal closed. Even when there was "a Happy for Sale by Owner," Buyer, Bank and Escrow Closer.

I hope you can understand why **you and I have to be protected** from being an alleged party to a "for sale by owner" transaction. Especially when we were not wanted in the first place.

The cost and time of a frivolous lawsuit to date approaches 55 hours \$9,500.

**We need HB 518** - amended and strengthened to protect our businesses and citizens from the extortion and intimidation of Ostensible Agency that result from a "For Sale By Owner" deal.

## **A Conversation on Ostensible Agency.**

For businesses and citizens in the Real Estate Industry it implies and alleges you maybe a party in a "for sale by owner" transaction in Real Estate. A deal direct from the owner to a buyer excluding you.

It also implies alleges you are a (dual agent) representing both sides of the "for sale by owner" deal you were never made a party to by contract or compensation. The facts are far different.

Ostensible Agency alleges /implies and claims you are a party to a transaction even though:

1. You were not a contracted party for Buyer or Seller.
2. You did not receive compensation from the Buyer or Seller.
3. You had no rights to enter on the property from Buyer or Seller.
4. You had no authority to inspect the property for Buyer or Seller.
5. You had no authority to market or advertise for the Seller.
6. You never witnessed the deal for either the Buyer or Seller.
7. You had no assigned duties for the Buyer or Seller.
8. You were excluded from review of purchasing a closing document by Buyer or Seller.

Ostensible Agency violates Contract Law with Compensation and Statute of Fraud Law in Real Estate.

Without any authority, notice or right in a Real Estate for sale you can be joined in a frivolous lawsuit costing thousands of dollars.

**Exhibit # 1 What the Bill Drafter Produced.**

HOUSE BILL NO. 518

INTRODUCED BY K. PETERSON

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT THE PRINCIPLES OF OSTENSIBLE AGENCY DO NOT APPLY TO A REAL ESTATE BROKER WITH RESPECT TO ANY REAL ESTATE TRANSACTION IN WHICH THE BROKER HAS NOT INTENTIONALLY OR BY WANT OF ORDINARY CARE CAUSED A THIRD PERSON TO BELIEVE THAT ANOTHER PERSON IS THE REAL ESTATE BROKER'S AGENT."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1" Ostensible agency not applicable to brokers. The principles of ostensible agency do not apply to a broker licensed under the provisions of this part with respect to any real estate transaction in which the broker has not intentionally or by want of ordinary care caused a third person to believe that another person is the broker's agent or is authorized to act on the broker's behalf with respect to that real estate transaction.

NEW SECTION. Section 2. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 37, chapter 51, part 4, and the provisions of Title 37, chapter 51, part 4, apply to [section 1].

-END-

**Exhibit # 2 The Bill as Requested.**

Definition Ostensible Agency as applied to the transfer of Real Estate is defined as anyone claimed to have implied duties, without a written contract or agreement for compensation.

*An Ostensible Agency or agent claim must comply with Contract Law and Montana Real Estate statutes of fraud law.*

An Office, or person is not an ostensible agency or ostensible agent unless the following condition are all met:

- (A) There is a written contract to perform specific duties.
- (B) There is an agreement for compensation.
- (C) There is an authority to enter on the property from buyer or seller.
- (D) All negative property conditions may be reported to all parties in the transaction by ostensible agency (agent).

## **Support HB 518, Ostensible agency Protection**

Support, amend, and strengthen language in HB518 to protect Montana citizens, small businesses and you from intimidation, and frivolous lawsuit claims of fraud and misrepresentation in 'for sale by owner' (FSBO) real estate transactions, when you were never a party to the deal.

Help protect a citizens right to do personal FSBO transactions without outside interference in real estate, as they originally agreed.

Ostensible agency attempts to invade 'For sale by owner' deals with implied claims and ignores the following:

1. Contract law and compensation.
2. Statute of fraud in real estate requiring real estate deal be in writing.

Private real estate deals.

Ostensible agency claims you are part of a real estate deal in 'for sale by owner' transactions without a right to:

1. witness the deal
2. without a contract,
3. without compensation,
4. without a right to enter on property,
5. without any purchasing or closing document,
6. no authority to inspect,
7. without any assigned duties.

Ostensible agency claims a right to intrude on a for 'sale by owner' deal as public policy, without the permission of the seller and without the permission of buyers when they start a deal

Implied ostensible agency does not belong in contract law and real estate statute of fraud law and lacks any authority to enter in to a personal transaction in a real estate deal.

The following can suffer frivolous claims of fraud and misrepresentation: lawyers, engineers, accountants, real estate offices, anyone involved in the real estate industry business, home inspection services, etc.

### Example

A builder builds a home for a friend 'FSBO'. The brand new home passes Federal FHA, plan approval and all federal inspection with one year warranty. It passes state and local inspections. The 'for sale by owner' deal runs directly through bank and escrow with both parties happy.

You still may be caught in a lawsuit alleging fraud if one of the properties becomes unhappy in the deal two years later.

You may also be held liable for warranty of brand new home that was never lived in and a deal that you never witnessed, for up to eight years.

Ostensible agent as it applies to merchandise does not belong in 'for sale by owner' personal real estate deals.

**Summary** - All citizen in Montana have a right to do personal real estate transaction without the cost of a shepherd if they choose.

Ostensible agency and agent should not apply to anyone who was not allowed to enter on the property, have contracted duties, never witnessed the deal and received no pay.

Tighten the language and stop the suffering and abuse a lawsuit places on you and the citizens of Montana.

Ostensible agency may be good in the sale of merchandise. It does not belong in real estate deals that has a bundle of rights. As a victim of ostensible agency, I hope you can support & strengthen HB 518. It can jump out at you at any time. Costing you thousands of dollars to defend yourself.

Clayton Fiscus

Broker owner, Home builder, small business

35 years.

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